

1 UNITED STATES DISTRICT COURT  
2 WESTERN DISTRICT OF VIRGINIA  
3 Charlottesville Division

3 DONALD R. SCOTT and Civil No. 3:10cv00024  
4 MELISSA J. SCOTT,

5 Plaintiffs,

6 vs. Charlottesville, Virginia

7 GMAC MORTGAGE, LLC,

8 Defendant. February 24, 2011

9 TRANSCRIPT OF TELEPHONE HEARING  
10 BEFORE THE HONORABLE B. WAUGH CRIGLER,  
11 UNITED STATES MAGISTRATE JUDGE

12 APPEARANCES:

13 For the Plaintiffs:

14 Martin & Raynor  
15 JONATHAN T. WREN  
16 1228 Cedars Court  
17 Charlottesville, VA 22903

18 For the Defendant:

19 Troutman Sanders LLP  
20 JASON E. MANNING  
21 222 Central Park Ave.  
22 Suite 200  
23 Virginia Beach, VA 23462

24 Court Reporter:

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U.S. Court Reporter  
255 W. Main St. Room 304  
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Proceedings recorded by mechanical stenography;  
transcript produced by computer.

1 THE COURT: Let me call the case and let's  
2 see where we are here.

3 This is 3:10CV24, Donald and Melissa Scott  
4 versus GMAC Mortgage, LLC.

5 Mr. Manning is on for the defendant and Mr.  
6 Wren is on for the plaintiff.

7 The Court convened this telephonic hearing  
8 with a Court Reporter, in light of Mr. Manning's  
9 February 21st letter to the Court and Mr. Wren's  
10 February 23rd response.

11 I do want to say to Mr. Manning, I would  
12 have attempted to accommodate your present schedule, but  
13 there were just too many players involved to deal with  
14 that at the last minute, so please accept the Court's  
15 apologies for not being able to accommodate your request  
16 to extend this to 3:00.

17 MR. MANNING: No problem, Judge. I can redo  
18 the deposition later.

19 THE COURT: The reason we're here is that  
20 the letter raised some issues about information being  
21 obtained from Crown Mortgage in which my son is a  
22 principle and from what I can glean from the letters,  
23 it's historical information about rate sheets back in,  
24 what was it, 2006 or '7/? I don't have the dates  
25 sitting in front of me.

1 I wanted to find out from the defendant, is  
2 there a request for me to recuse myself from the case  
3 because, I mean, all of this is news to me and certainly  
4 I don't know what position the defendant is taking based  
5 on these facts.

6 MR. MANNING: Judge, this is Jason Manning  
7 for GMAC Mortgage.

8 It was news to us also. Our concern is not  
9 with Your Honor so much as the expert who has, it  
10 appears, deliberately attempted to reach out to your  
11 son, knowing that you are assigned to the case, and then  
12 not disclosing that fact, while still soliciting  
13 information from your son, from a time period when GMAC  
14 Mortgage, as the expert admits, may have been a  
15 competitor with your son's businesses, with locations in  
16 Charlottesville.

17 THE COURT: That still doesn't answer my  
18 question. Are you asking me to recuse myself from the  
19 case?

20 MR. MANNING: Judge, we're not making that  
21 request at this point because we are going to file a  
22 motion to exclude the expert and we believe that that is  
23 improper contact. It appears to have been deliberate by  
24 the expert. It has the potential for biassing the jury  
25 in this case and we believe it was inappropriate and

1 deliberate by the expert. So at this point, what we're  
2 going to do is file the motion and I'm not making a  
3 request for Your Honor to recuse himself.

4 THE COURT: That motion will be heard by  
5 Judge Moon or whoever is sitting in the case.

6 Who is this case assigned to; Judge Moon?

7 MR. MANNING: That's right.

8 THE COURT: I won't hear the motion  
9 whatsoever. Whatever basis you have for that will be  
10 what you have to present to the Court. The only  
11 question that I needed to address with the parties is  
12 whether the defendant is seeking recusal, my recusal,  
13 and if so, I was going to put everybody on a briefing  
14 schedule for that. But if it only deals with the issue  
15 of whether the expert is able to testify and if so, to  
16 what extent and so forth, that's going to be up to Judge  
17 Moon. That's a part he'll just have to handle.

18 MR. MANNING: As I understand, Judge, the  
19 issue is resolved if the expert is excluded. In the  
20 event he is not and we end up going to trial --

21 THE COURT: Wait a minute. We've got to  
22 deal with this case as it stands and the question I have  
23 is whether there's any conflict of interest simply by  
24 virtue of -- I guess you'll raise the question if Judge  
25 Moon overrules your objection or your motion?

1 MR. MANNING: I'm really not sure I follow  
2 you, Judge.

3 THE COURT: You said the issue is resolved.  
4 What issue is there to be resolved if you're not moving  
5 for my recusal?

6 MR. MANNING: Well, I believe that the  
7 expert's contact here and the expert's conduct in  
8 contacting your son about something that happened back  
9 in 2007, which it invites the question as to why him,  
10 Judge, because we're not sure how close they are. It  
11 appears they're not very close, but he deliberately  
12 reached out to contact him for some unknown reason and  
13 then used those rate sheets that your son provided as a  
14 basis for his expert report.

15 I think it raises the concern of at least  
16 the potential for appearance of impropriety in front of  
17 the jury, but that issue need not be briefed if the  
18 expert is excluded pursuant to our motion.

19 THE COURT: I'm just not following because  
20 it would only come before the jury if for some reason  
21 the issue of some relationship is brought up and the  
22 question I have is, if you're moving for me to recuse  
23 myself, then I will address it in an appropriate  
24 fashion. If you're not, then there's nothing for me to  
25 do at this time until and unless there is a motion for

1    recusal and if you're seeking to exclude the evidence  
2    for some reason that you've formulated, then that's a  
3    matter for Judge Moon to resolve one way or the other.

4 Do you agree with that?

5 MR. MANNING: I'm not really sure, Judge. I  
6 understand -- that seems reasonable to me. I am not  
7 making a motion for you to recuse yourself. I think  
8 we're in agreement on that.

9 THE COURT: If there's no motion to recuse  
10 based on these letters, then I'm just going to treat the  
11 letters as letters because I don't see a conflict that  
12 would be automatic recusal unless there's a basis for  
13 it. It's just like going to Wal-Mart, if my son was a  
14 manager of Wal-Mart, and asking Wal-Mart for some  
15 historical information. Right now, that's all I know.  
16 There's no basis for me to sue sponte recuse myself  
17 based on the letters and unless you're moving for me to  
18 recuse myself, you need to take up your motion for  
19 exclusion of the evidence with Judge Moon.

20 | Do you agree with that?

21 MR. MANNING: That's what we intend to do,  
22 Judge.

23 THE COURT: Mr. Wren, do you want to add  
24 anything to the conversation?

25 MR. WREN: At this point, I don't have

1 anything to add, Your Honor.

2 THE COURT: If that's all that these letters  
3 did, then there's nothing for me to do and I just wanted  
4 to make sure that the record was clear about what these  
5 letters were intended to purvey, information, and what  
6 they were seeking the Court to do, which is nothing at  
7 this time, and whatever motion Mr. Manning wants to file  
8 on behalf of GMAC with respect to the inclusion or  
9 exclusion of the expert, that's a matter for the trial  
10 Court to determine based on the process that he and I  
11 developed over the years where he rules on his own  
12 motions to exclude evidence.

13 MR. MANNING: Okay, Judge.

14 Just to make sure I'm clear on the record,  
15 the letters were driven by what we believe is a serious  
16 issue -- though you're right, we're not asking for Your  
17 Honor to recuse yourself -- because we believe the  
18 impropriety here is by the expert.

19 THE COURT: Mr. Manning, let me just inform  
20 you of one thing. I don't think the rules have changed  
21 simply because there's electronic filing and the rules  
22 say that pleadings and every other thing is not a  
23 pleading that's contained in the record of the case. So  
24 if it's not to be construed as a pleading in that it's a  
25 motion to recuse the Court, then I'm just going to treat

1 it as a communication that I'm not going to respond to  
2 because I'm not asked to respond to it. You can do what  
3 you wanted to with it with Judge Moon and we'll see what  
4 happens afterwards.

5 MR. MANNING: That's, fair, Judge. We just  
6 wanted to inform the Court because we believe it's  
7 something that shouldn't lie dormant and we will take it  
8 up with Judge Moon.

9 THE COURT: Anything further, Mr. Wren?

10 MR. WREN: No, sir.

11 THE COURT: With that, these proceedings are  
12 concluded.

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15 "I certify that the foregoing is a correct transcript  
16 from the record of proceedings in the above-entitled  
17 matter.

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20 /s/ Sonia Ferris

March 8, 2011

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